

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SANDRA L. ROBERSON,)
) No. CV-10-23-JPH
Plaintiff,)
) ORDER GRANTING DEFENDANT'S
v.) MOTION FOR SUMMARY JUDGMENT
)
MICHAEL J. ASTRUE, Commissioner)
of Social Security,)
)
Defendant.)
)
)

BEFORE THE COURT are cross-motions for summary judgment noted for hearing without oral argument on February 18, 2011 (Ct. Rec. 14, 20). Attorney Maureen J. Rosette represents Plaintiff; Special Assistant United States Attorney Gerald J. Hill represents the Commissioner of Social Security (Commissioner). The parties have consented to proceed before a magistrate judge (Ct. Rec. 8). On January 18, 2011, plaintiff filed a reply (Ct. Rec. 22). After reviewing the administrative record and the briefs filed by the parties, the court **grants** defendant's motion for summary judgment (Ct. Rec. 20) and **denies** plaintiff's motion for summary judgment (Ct. Rec. 14).

JURISDICTION

Plaintiff concurrently filed applications for supplemental security income (SSI) and disability insurance income (DIB) on

1 June 13, 2005, alleging onset as of December 30, 2001 (Tr. 95-105,
2 106-112). The applications were denied initially and on
3 reconsideration (Tr. 36-37, 43-46). Administrative Law Judge (ALJ)
4 R. J. Payne held hearings on November 1, 2007, and March 18, 2008
5 (Tr. 560-565, 568-610). Plaintiff, represented by counsel, and R.
6 Thomas McKnight, Ph.D., testified. On April 19, 2008, the ALJ
7 issued a decision finding that plaintiff was disabled when
8 substance abuse is included (Tr. 21). He found when DAA is
9 excluded, plaintiff is not disabled (Tr. 22-23). The ALJ concluded
10 DAA is a factor materially contributing to plaintiff's disability
11 determination (Tr. 27). He found plaintiff is barred from
12 receiving benefits and is not disabled (Tr. 27).

13 With respect to plaintiff's prior (2002) applications (Tr.
14 113-115), the ALJ notes they were initially denied October 13,
15 2003, and plaintiff did not appeal (Tr. 17, referring to Tr. 51-
16 54). The ALJ did not find good cause to reopen the initial
17 determination, meaning the relevant period in the present case
18 begins October 18, 2003, the day after the agency issued the
19 initial determination (Tr. 17, 560, citing 20 C.F.R. § 404.987 *et*
20 *seq.* and 416.1488 *et seq.*).

21 The Appeals Council denied plaintiff's request for review on
22 December 5, 2009 (Tr. 6-8). Therefore, the ALJ's decision became
23 the final decision of the Commissioner, which is appealable to the
24 district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed
25 this action for judicial review pursuant to 42 U.S.C. § 405(g) on
26 January 25, 2010 (Ct. Rec. 1,4).

27 STATEMENT OF FACTS

28 The facts have been presented in the administrative hearing

1 transcript, the ALJ's decision, the briefs of the parties, and
2 will only be summarized here.

3 Plaintiff testified she was 40 years old and has a high
4 school education (Tr. 587-588). She has worked as a pizza maker,
5 cashier, food vendor, waitress, telemarketer, and assembler (Tr.
6 251, 589-592). She lives with her two teenaged children (Tr. 189,
7 588). In July 2005, plaintiff reported she cooks, cleans, does
8 laundry, irons, shops, reads, sews, and enjoys going out to play
9 bingo (Tr. 189, 191-193). In November and December of 2005, she
10 worked as an assembler but at less than SGA levels (Tr. 218, 223,
11 236). Plaintiff testified after undergoing treatment for DAA in
12 March and April 2004, she remained clean for eight months. Then,
13 in January 2005, she relapsed and used drugs for eight months (Tr.
14 597-598, 600). She used drugs "off and on" from 2005 to 2007 (Tr.
15 601). Plaintiff last used in May 2007 and had been clean for ten
16 months at the time of the hearing (Id.). She volunteers twice a
17 week at AA, rides the bus, watches television, and cleans (Tr.
18 602, 605). She has had no seizures since becoming clean (Tr. 604).
19 Ms. Roberson alleges when DAA is excluded, she is unable to work
20 due to foot pain¹ and mental impairments, including depression and
21 anxiety (Tr. 602-603).

22 SEQUENTIAL EVALUATION PROCESS

23 The Social Security Act (the Act) defines disability as the
24 "inability to engage in any substantial gainful activity by reason
25 of any medically determinable physical or mental impairment which
26

27 ¹Although plaintiff testified foot pain prevents her from
28 working, her appeal is limited to the ALJ's assessment of mental
impairments.

1 can be expected to result in death or which has lasted or can be
2 expected to last for a continuous period of not less than twelve
3 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also
4 provides that a Plaintiff shall be determined to be under a
5 disability only if any impairments are of such severity that a
6 plaintiff is not only unable to do previous work but cannot,
7 considering plaintiff's age, education and work experiences,
8 engage in any other substantial gainful work which exists in the
9 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). Thus,
10 the definition of disability consists of both medical and
11 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
12 (9th Cir. 2001).

13 The Commissioner has established a five-step sequential
14 evaluation process for determining whether a person is disabled.
15 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person
16 is engaged in substantial gainful activities. If so, benefits are
17 denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not,
18 the decision maker proceeds to step two, which determines whether
19 plaintiff has a medically severe impairment or combination of
20 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

21 If plaintiff does not have a severe impairment or combination
22 of impairments, the disability claim is denied. If the impairment
23 is severe, the evaluation proceeds to the third step, which
24 compares plaintiff's impairment with a number of listed
25 impairments acknowledged by the Commissioner to be so severe as to
26 preclude substantial gainful activity. 20 C.F.R. §§
27 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P
28 App. 1. If the impairment meets or equals one of the listed

1 impairments, plaintiff is conclusively presumed to be disabled.
2 If the impairment is not one conclusively presumed to be
3 disabling, the evaluation proceeds to the fourth step, which
4 determines whether the impairment prevents plaintiff from
5 performing work which was performed in the past. If a plaintiff is
6 able to perform previous work, that Plaintiff is deemed not
7 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At
8 this step, plaintiff's residual functional capacity (RFC)
9 assessment is considered. If plaintiff cannot perform this work,
10 the fifth and final step in the process determines whether
11 plaintiff is able to perform other work in the national economy in
12 view of plaintiff's residual functional capacity, age, education
13 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
14 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

15 The initial burden of proof rests upon plaintiff to establish
16 a *prima facie* case of entitlement to disability benefits.
17 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*
18 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
19 met once plaintiff establishes that a physical or mental
20 impairment prevents the performance of previous work. The burden
21 then shifts, at step five, to the Commissioner to show that (1)
22 plaintiff can perform other substantial gainful activity and (2) a
23 "significant number of jobs exist in the national economy" which
24 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th
25 Cir. 1984).

26 Plaintiff has the burden of showing that drug and alcohol
27 addiction (DAA) is not a contributing factor material to
28 disability. *Ball v. Massanari*, 254 F.3d 817, 823 (9th Cir. 2001).

1 The Social Security Act bars payment of benefits when drug
2 addiction and/or alcoholism is a contributing factor material to a
3 disability claim. 42 U.S.C. §§ 423 (d)(2)(C) and 1382(a)(3)(J);
4 *Sousa v. Callahan*, 143 F.3d 1240, 1245 (9th Cir. 1998). If there
5 is evidence of DAA and the individual succeeds in proving
6 disability, the Commissioner must determine whether the DAA is
7 material to the determination of disability. 20 C.F.R. §§ 404.1535
8 and 416.935. If an ALJ finds that the claimant is not disabled,
9 then the claimant is not entitled to benefits and there is no need
10 to proceed with the analysis to determine whether substance abuse
11 is a contributing factor material to disability. However, if the
12 ALJ finds that the claimant is disabled, then the ALJ must proceed
13 to determine if the claimant would be disabled if he or she
14 stopped using alcohol or drugs.

15 STANDARD OF REVIEW

16 Congress has provided a limited scope of judicial review of a
17 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold
18 the Commissioner's decision, made through an ALJ, when the
19 determination is not based on legal error and is supported by
20 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995 (9th
21 Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).
22 "The [Commissioner's] determination that a plaintiff is not
23 disabled will be upheld if the findings of fact are supported by
24 substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9th
25 Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is
26 more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112,
27 1119 n. 10 (9th Cir. 1975), but less than a preponderance.
28 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);

1 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d
2 573, 576 (9th Cir. 1988). Substantial evidence "means such
3 evidence as a reasonable mind might accept as adequate to support
4 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
5 (citations omitted). "[S]uch inferences and conclusions as the
6 [Commissioner] may reasonably draw from the evidence" will also be
7 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). On
8 review, the Court considers the record as a whole, not just the
9 evidence supporting the decision of the Commissioner. *Weetman v.*
10 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989)(quoting *Kornock v.*
11 *Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

12 It is the role of the trier of fact, not this Court, to
13 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
14 evidence supports more than one rational interpretation, the Court
15 may not substitute its judgment for that of the Commissioner.
16 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
17 (9th Cir. 1984). Nevertheless, a decision supported by substantial
18 evidence will still be set aside if the proper legal standards
19 were not applied in weighing the evidence and making the decision.
20 *Browner v. Secretary of Health and Human Services*, 839 F.2d 432,
21 433 (9th Cir. 1987). Thus, if there is substantial evidence to
22 support the administrative findings, or if there is conflicting
23 evidence that will support a finding of either disability or
24 nondisability, the finding of the Commissioner is conclusive.
25 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

26 **ALJ'S FINDINGS**

27 The ALJ found plaintiff met the DIB requirements and was
28 insured through June 30, 2006 (Tr. 18, 20). At step one, he found

1 plaintiff has not engaged in substantial gainful activity since
2 October 13, 2003, the day after her prior application was denied
3 (Tr. 20). At step two, the ALJ found Ms. Roberson suffers from the
4 severe impairments of substance abuse and personality disorder
5 (Tr. 20). At step three, he found these impairments met two of the
6 Listed impairments, 12.08 and 12.09 (Tr. 21), meaning plaintiff
7 was disabled. Because the ALJ found plaintiff disabled, he then
8 considered, pursuant to *Bustamante v. Massanari*, if Ms. Roberson
9 would continue to be disabled if she stopped abusing substances
10 (Tr. 21-26).

11 When substance abuse is excluded, at step two the ALJ found
12 plaintiff does not suffer an impairment or combination of
13 impairments that significantly limits her ability to perform basic
14 work activities (Tr. 26). He found DAA is a contributing factor
15 material to the disability determination. Accordingly, the ALJ
16 found plaintiff is not disabled as defined by the Social Security
17 Act (Tr. 27).

18 ISSUES

19 Plaintiff alleges the Commissioner erred at step two when he
20 found her mental impairments are not severe, when DAA is excluded
21 (Ct. Rec. 15 at 8-12). She alleges he erred because he failed to
22 properly weigh the opinions of Drs. Shecter, Rosenkrans, Pollack,
23 and McKnight (Ct. Rec. 15 at 13-15). The Commissioner responds
24 that the ALJ properly weighed the evidence. He asks the Court to
25 affirm (Ct. Rec. 21 at 2, 5, 9-15).

26 DISCUSSION

27 A. Weighing medical evidence

28 In social security proceedings, the claimant must prove the

1 existence of a physical or mental impairment by providing medical
2 evidence consisting of signs, symptoms, and laboratory findings;
3 the claimant's own statement of symptoms alone will not suffice.
4 20 C.F.R. § 416.908. The effects of all symptoms must be evaluated
5 on the basis of a medically determinable impairment which can be
6 shown to be the cause of the symptoms. 20 C.F.R. § 416.929. Once
7 medical evidence of an underlying impairment has been shown,
8 medical findings are not required to support the alleged severity
9 of symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir.
10 1991).

11 A treating physician's opinion is given special weight
12 because of familiarity with the claimant and the claimant's
13 physical condition. *Fair v. Bowen*, 885 F.2d 597, 604-05 (9th Cir.
14 1989). However, the treating physician's opinion is not
15 "necessarily conclusive as to either a physical condition or the
16 ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747,
17 751 (9th Cir. 1989)(citations omitted). More weight is given to a
18 treating physician than an examining physician. *Lester v. Chater*,
19 81 F.3d 821, 830 (9th Cir. 1995). Correspondingly, more weight is
20 given to the opinions of treating and examining physicians than to
21 nonexamining physicians. *Benecke v. Barnhart*, 379 F.3d 587, 592
22 (9th Cir. 2004). If the treating or examining physician's opinions
23 are not contradicted, they can be rejected only with clear and
24 convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the
25 ALJ may reject an opinion if he states specific, legitimate
26 reasons that are supported by substantial evidence. See *Flaten v.*
27 *Secretary of Health and Human Serv.*, 44 F.3d 1435, 1463 (9th Cir.
28 1995).

1 In addition to the testimony of a nonexamining medical
2 advisor, the ALJ must have other evidence to support a decision to
3 reject the opinion of a treating physician, such as laboratory
4 test results, contrary reports from examining physicians, and
5 testimony from the claimant that was inconsistent with the
6 treating physician's opinion. *Magallanes v. Bowen*, 881 F.2d 747,
7 751-52 (9th Cir. 1989); *Andrews v. Shalala*, 53 F.3d 1042-43 (9th
8 Cir. 1995).

9 *Dr. Shecter*

10 The ALJ considered the January 16, 2006, opinion of examining
11 psychologist Nina Shecter, Ph.D. (Tr. 24, 313-317). Dr. Shecter
12 administered the Mental Status Exam (MSE), Beck depression
13 inventory, and conducted a clinical interview (Tr. 313). Plaintiff
14 said she was diagnosed with schizophrenia two weeks earlier and
15 had never seen a psychiatrist. Dr. Shecter's record review was
16 limited to treatment notes from three visits in 2005 to Michael
17 Yourzek, PAC (Tr. 313, 317). Dr. Shecter notes Mr. Yourzek changed
18 antidepressant medication at each visit, and increased prescribed
19 anti-psychotic medication, zyprexa (Tr. 313). Plaintiff did not
20 know how much prescribed medication she takes. She has not used
21 drugs for eight months (Tr. 314). Dr. Shecter observes Ms.
22 Roberson was less than forthcoming, and blamed it on tiredness due
23 to medications (Tr. 315). She diagnosed major depressive disorder,
24 recurrent, severe with psychotic features²; bipolar disorder,
25 severity unspecified, and history of substance dependence, by self

27 ²The diagnosis of psychotic features appears to be based on
28 plaintiff's somewhat vague descriptions of auditory and visual
hallucinations (Tr. 315-316)
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1 report. Dr. Shecter assessed a current GAF of 31. She recommended
2 a psychiatric evaluation to determine if bipolar disorder "truly
3 exists," adjustment of medications as necessary, random drug
4 testing, and parenting classes. She opined plaintiff was currently
5 unable to work (316-317).

6 *Dr. Rosenkrans*

7 At the first hearing Dr. McKnight opined further
8 psychological testing was needed. Accordingly, plaintiff was
9 examined on November 29, 2007, by psychologist Frank Rosenkrans,
10 Ph.D. (Tr.443-450). He assessed cocaine dependence, malingering
11 and borderline personality disorder (Tr. 449). Dr. Rosenkrans
12 diagnosed malingering in part because reported hallucinations were
13 so atypical as to be only diagnosable as malingering, as the ALJ
14 notes (Tr. 25, 444, 450). He assessed a GAF of 60 indicating
15 moderate symptoms or impairment (Tr. 449).

16 *Dr. Pollack*

17 The ALJ considered Dr. Pollack's March 2008 opinion (Tr. 25-
18 26, 524-533). He diagnosed polysubstance dependence, in remission,
19 bipolar disorder, and personality disorder NOS. He notes scores
20 indicate plaintiff "may have been overstating her difficulties"
21 and assessed a GAF of 55 (Tr. 527-529).

22 To aid in weighing the conflicting medical evidence, the ALJ
23 evaluated plaintiff's credibility and found her less than fully
24 credible (Tr. 23-24), a determination she does not challenge on
25 appeal. Credibility determinations bear on evaluations of medical
26 evidence when an ALJ is presented with conflicting medical
27 opinions or inconsistency between a claimant's subjective
28 complaints and diagnosed condition. See *Webb v. Barnhart*, 433 F.3d

1 683, 688 (9th Cir. 2005).

2 It is the province of the ALJ to make credibility
3 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.
4 1995). However, the ALJ's findings must be supported by specific
5 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir.
6 1990). Once the claimant produces medical evidence of an
7 underlying medical impairment, the ALJ may not discredit testimony
8 as to the severity of an impairment because it is unsupported by
9 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.
10 1998). Absent affirmative evidence of malingering, the ALJ's
11 reasons for rejecting the claimant's testimony must be "clear and
12 convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).
13 "General findings are insufficient: rather the ALJ must identify
14 what testimony not credible and what evidence undermines the
15 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*
16 *Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

17 Although there is some evidence of malingering, ALJ Payne
18 gave clear and convincing reasons for his credibility assessment,
19 including activities inconsistent with claimed disabling
20 limitations, failure to allege disabling mental limitations, and
21 inconsistent statements (Tr. 23-24). The ALJ points out raising
22 teenagers as a single parent is an activity inconsistent with
23 claimed disabling mental limitations. He notes plaintiff testified
24 she lost her last two jobs as a result of foot problems. On
25 appeal, she claims disabling mental, but not physical,
26 limitations.

27 The ALJ's reasons for finding plaintiff less than fully
28 credible are clear, convincing, and fully supported by the record.

1 See *Thomas v. Barnhart*, 278 F.3d 947, 958-959 (9th Cir. 2002)
2 (proper factors include inconsistencies in plaintiff's statements,
3 inconsistencies between statements and conduct, and extent of
4 daily activities).

5 When the ALJ weighed the medical evidence he considered the
6 testimony of Dr. McKnight (Tr. 24-26).

7 With respect to Dr. Shecter's contradicted opinion, the ALJ
8 relied on Dr. McKnight's testimony that people with cocaine or
9 marijuana dependence can have psychotic kinds of responses to the
10 drugs³, and that claimant's bipolar symptoms were related to her
11 substance dependence (Tr. 24). The ALJ rejected Dr. Shecter's
12 conclusions because she failed to separate out the effect of DAA
13 on plaintiff's functioning (Tr. 24). This is a specific and
14 legitimate reason.

15 With respect to Dr. Rosenkrans's contradicted opinion, Dr.
16 McKnight opined plaintiff's hallucinations may have been drug
17 induced. The ALJ opines it does not appear Dr. Rosenkrans
18 considered this possibility and instead diagnosed malingering (Tr.
19 25). Again, this reflects a failure to separate out the effects of
20 DAA. Since the ALJ found plaintiff disabled when DAA is included,
21 the only relevant inquiry is whether she suffers more than minimal
22 limitation when DAA is excluded.

23 With respect to Dr. Pollack's contradicted opinion, the ALJ
24 notes Dr. McKnight testified plaintiff's scores on the MMPI-2 and
25

26 ³Spokane Mental Health, for example, made a rule out
27 diagnosis of cocaine-induced psychotic disorder with
28 hallucinations in August and October 2007 (Tr. 482, 488, 498).
Plaintiff told two different professionals she experienced audio
and visual hallucinations while using cocaine heavily (Tr. 341,
464).

1 Millan are inconsistent (Tr. 25). The MMPI scores do not show
2 significant difficulties in areas the Millan does, and the Millan
3 tends to over diagnose (Tr. 25-26). Dr. Pollack assessed a marked
4 limitation in the ability to perform activities within a schedule,
5 maintain regular attendance, and be punctual within customary
6 tolerances (Tr. 26). The ALJ relied on Dr. McKnight's testimony
7 that plaintiff was drug free for the past several months; during
8 that time she was noted to interact well with examiners, arrive on
9 time and follow directions, evidence that contradicts Dr.
10 Pollack's assessed marked limitation. These are specific,
11 legitimate reasons supported by substantial evidence.

12 Contrary to plaintiff's assertion, the ALJ relied on more
13 than Dr. McKnight's testimony when he weighed the examining
14 professionals' opinions. He relied on plaintiff's credibility,
15 including inconsistent reports of drug use, and the entire record,
16 when he weighed the conflicting evidence.

17 The ALJ is responsible for reviewing the evidence and
18 resolving conflicts or ambiguities in testimony. *Magallanes v.*
19 *Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). It is the role of the
20 trier of fact, not this court, to resolve conflicts in evidence.
21 *Richardson*, 402 U.S. at 400. The court has a limited role in
22 determining whether the ALJ's decision is supported by substantial
23 evidence and may not substitute its own judgment for that of the
24 ALJ, even if it might justifiably have reached a different result
25 upon de novo review. 42 U.S.C. § 405 (g).

26 The ALJ's decision is supported by substantial evidence. His
27 reasons for discrediting some of the examining psychologists'
28 contradicted opinions are specific, legitimate and supported by

1 the record.

2 **B. Materiality of DAA**

3 The ALJ found if plaintiff refrained from substance abuse,
4 her impairments would be non-severe. She alleges this is error
5 (Ct. Rec. 15 at 8-15).

6 The ALJ accurately points out plaintiff has described herself
7 as able to sleep, stay calm, and have no hallucinations when
8 abstinent and medication compliant (Tr. 23, referring to Ex. 6F/1,
9 21F). She has quit taking prescribed antidepressant medication
10 many times throughout the record, but continues to request it
11 because, she alleges, her depression improves when she takes it as
12 prescribed (see, e.g., Tr. 267-269)(in 2003, symptoms improved on
13 medication); (in 2005, Tr. 306-307, 312)(medications are
14 working)(in 2006, Tr. 390)(same). In March 2006 plaintiff reported
15 she is using crack and marijuana when she needs to slow down (Tr.
16 398).

17 In July 2007, plaintiff told treating professional Scott
18 Gilbert, MSW, that depression, for the most part, has not been a
19 problem recently (Tr. 385). Significantly, she had been
20 incarcerated (and apparently drug free) for three weeks. Ms.
21 Roberson was released from jail on June 11, 2007 (Tr. 340; 465),
22 shortly before she saw Mr. Gilbert. In August 2008, she reports
23 "doing great, working," and "not doing drugs" (Tr. 468-469), and
24 denies depression and does not report periods of hyperactivity
25 (Tr. 488).

26 Impairments that can be controlled effectively with
27 medication are not disabling for the purpose of determining
28 eligibility for SSI benefits. *Warre v. Comm'r of Soc. Sec. Admin.*,

1 439 F.3d 1001, 1006 (9th Cir. 2006).

2 At step two, when DAA is excluded, the ALJ found any
3 impairments are non-severe (i.e., cause no more than a slight
4 abnormality that would have no more than a minimal effect on her
5 ability to work). His conclusion is fully supported by the medical
6 and other evidence. See 20 C.F.R. §§ 404.1521 and 416.921.

7
8 **CONCLUSION**

9 Having reviewed the record and the ALJ's conclusions, this
10 court finds that the ALJ's decision is free of legal error and
11 supported by substantial evidence..

12 **IT IS ORDERED:**

13 1. Defendant's Motion for Summary Judgment (**Ct. Rec. 20**) is
14 **granted.**

15 2. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 14**) is
16 **denied.**

17 The District Court Executive is directed to file this Order,
18 provide copies to counsel for Plaintiff and Defendant, enter
19 judgment in favor of Defendant, and **close** this file.

20 DATED this 15th day of February, 2011.

21 s/ James P. Hutton

22 JAMES P. HUTTON
23 UNITED STATES MAGISTRATE JUDGE
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